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8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10

11 VIOLA FRISON,	) CASE NO. 09CV1733 LAB NLS
)
12 Plaintiff,	) WMC MORTGAGE, LLC'S
	) NOTICE OF AND MOTION TO
13 vs.	) DISMISS OR, ALTERNATELY,
	) FOR A MORE DEFINITIVE
14 WMC Mortgage Corporation; Saxon	) STATEMENT
15 Mortgage Services, Inc. and all other	) [F.R.C.P. 12(b)(6), (e)]
16 claimants of whatsoever kind and)
17 character against real property commonly)
described as 440 Ringwood Drive, San)
18 Diego, CA 92114; APN 583-703-20; and	) DATE: FEBRUARY 16, 2010
DOES 1 through 100, inclusive,	) TIME: 11:15AM
19 Defendants.	) PLACE: COURT ROOM 9
)

20 BEFORE THE HONORABLE LARRY ALAN BURNS

21 AND TO EACH PARTY AND ATTORNEY OF RECORD:

22 PLEASE BE ADVISED AND TAKE NOTICE THAT on February 16, 2010, at
23 11:15AM, or as soon thereafter as counsel may be heard, in Courtroom 9 of the above
24 entitled court located on the second floor of 940 Front Street, San Diego, California, 92101,
25 the Honorable Larry Alan Burns, United States District Judge presiding, Defendant WMC
26 Mortgage, LLC, the successor in interest to and erroneously sued herein as WMC Mortgage
27 Corporation ("WMC") will, and does hereby, move to dismiss the entire Complaint filed
28

1 by Plaintiff Viola Frison (the "Motion to Dismiss").

2 The Motion to Dismiss will be made by authority of the Federal Rules of Civil
3 Procedure (F.R.C.P.) as follows:

- 4 I. The first cause of action for violation of the Real Estate Settlement Procedure
5 Act, 12 U.S.C. §2605 [RESPA] fails to state a claim upon which may be
6 granted against WMC [F.R.C.P. 12(b)(6)] and the claim is barred by 12 U.S.C.
7 §2614.
- 8 II. The second cause of action for violation of the Truth In Lending Act, 15
9 U.S.C. §1601 [TILA] fails to state a claim upon which may be granted against
10 WMC [F.R.C.P. 12(b)(6)] and the claim is barred by 12 U.S.C. §§1635(f) and
11 1640(e).
- 12 III. The third cause of action for violation of California's Business and
13 Professions Code §17200 fails to state a claim upon which may be granted
14 against WMC. F.R.C.P. 12(b)(6).
- 15 IV. The fourth cause of action for negligent misrepresentation fails to state a
16 claim upon which may be granted against WMC. F.R.C.P. 12(b)(6).
- 17 V. The fifth cause of action for fraud fails to state a claim upon which may be
18 granted against WMC. F.R.C.P. 12(b)(6).
- 19 VI. The sixth cause of action for rescission fails to state a claim upon which may
20 be granted against WMC. F.R.C.P. 12(b)(6).
- 21 VII. The seventh cause of action for "quasi-contract" fails to state a claim upon
22 which may be granted against WMC. F.R.C.P. 12(b)(6).
- 23 VIII. The eight cause of action for "determination of validity of lien" fails to state
24 a claim upon which may be granted against WMC. F.R.C.P. 12(b)(6).

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1 The Motion to Dismiss is made by authority of the aforementioned rules of the
 2 Federal Rules of Civil Procedure as well as the applicable Local Rules of this Honorable
 3 Court. The Motion to Dismiss will be based upon this notice, WMC's Memorandum of
 4 Points and Authorities as well as WMC's Request for Judicial Notice contemporaneously
 5 filed herewith and upon such argument as may be entertained by this Honorable Court at
 6 the hearing.

7 **PLEASE BE ADVISED AND TAKE FURTHER NOTICE THAT** at the same time
 8 and place, WMC will alternately move, under Rule 12(e) of the Federal Rules of Civil
 9 Procedure , for a more definite statement as to any claims to which the Motion to Dismiss
 10 is denied. The motion for a more definitive statement is made on the ground that the
 11 causes of action of the First Amended Complaint are ambiguous and vague such that
 12 WMC cannot reasonably prepare a response.

13 DATED: November 12, 2009

Respectfully submitted,

14 MARK V. ASDOURIAN, PLC



17 By: /s/ Mark V. Asdourian, Esq.

18 Mark V. Asdourian, Esq.,
 19 Attorneys for Defendant,
 20 WMC Mortgage, LLC

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Newport Beach, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is: Mark V. Asdourian, Attorney & Counselor At Law, A Professional Corporation, 450 Newport Center Drive, Suite 200, Newport Beach, California, 92660.

On November 12, 2009, I served a copy of the document(s) named below on the parties interested in this action.

DOCUMENT(S) SERVED: **WMC MORTGAGE, LLC'S NOTICE OF AND MOTION TO DISMISS OR, ALTERNATELY, FOR A MORE DEFINITIVE STATEMENT**

☒ By placing ☐ the original ☒ a true and correct copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. Postal Service on that same day with First Class postage, thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY EMAIL:** I electronically transmitted the document(s) identified above to the email address(es) of the persons set forth above from my email address of mva-esq@pacbell.net. To the best of my knowledge, the transmission was successful.

☐ **BY FACSIMILE:** I transmitted a true and correct copy of the above-referenced document from a facsimile machine at Mark V. Asdourian, Attorney & Counselor At Law, A Professional Corporation whose facsimile number is 949.644.5301 to the interested parties in this action at the facsimile number listed above. The above-described transmission(s) was/were reported as complete, without error, by a **COMMUNICATION JOURNAL** issued by the facsimile machine.

☐ **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **FEDERAL:** I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on **November 12, 2009**, at Newport Beach, California.



By: /s/ Mark V. Asdourian, Esq.
Mark V. Asdourian

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